

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TUN LINN**  
Claimant

**SWIFT PORK COMPANY**  
Employer

**APPEAL NO: 20A-UI-08502-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/12/20**  
**Claimant: Appellant (1)**

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871 IAC 24.23(10) – Leave of Absence  
Section 96.4-3 – Able and Available  
Section 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the June 15, 2020, reference 01 decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 23, 2020. The claimant participated in the hearing with CTS Language Link interpreter Jotamoi(12812). The employer provided the name and phone number of a witness but the witness was not available at that number at the time of hearing and did not participate in the hearing.

**ISSUE:**

The issues are whether the claimant's appeal is timely, whether he is able and available for work and whether he is on a leave of absence.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last known address of record on June 15, 2020. The claimant received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by June 25, 2020. The appeal was not filed until July 14, 2020, which is after the date noticed on the disqualification decision. The claimant is from Burma and does not read or write English. After holding the letter for one week he made an appointment with a place in Des Moines that could translate the letter for him. Following the translation, the claimant filed the appeal. Under these circumstances, the administrative law judge finds the claimant's appeal is timely.

The claimant was hired by the employer November 30, 2016. The claimant requested and was given a leave of absence March 27 through June 19, 2020, because he was concerned about COVID-19. The employer told the claimant that if he did not return to work by June 19, 2020, his employment would be terminated. The claimant chose not to return until July 16, 2020, at which time he was rehired.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not able and available for work and did take a leave of absence.

Iowa Code section 96.4-(3) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871.24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant requested and was given a leave of absence because he was concerned about COVID-19. Because a claimant is not considered able and available for work when on a leave of absence, benefits must be denied.

**DECISION:**

The June 15, 2020, reference 01, decision is affirmed. The claimant is not able to work and available for work effective April 12, 2020. Benefits are withheld until such time as the claimant makes himself available for work to the extent he was available during the base period history and the employer has no suitable or comparable work available.



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Julie Elder  
Administrative Law Judge

September 25, 2020  
Decision Dated and Mailed

je/mh

*Note to Claimant:* This decision determines you are not eligible for regular unemployment insurance benefits. If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.